

YAP SEONG KON*a***v.****PP**

HIGH COURT MALAYA, KUALA LUMPUR

b

ABDUL WAHAB PATAIL J

[CRIMINAL NO: 41-272-1998]

17 FEBRUARY 2003

ROAD TRAFFIC: *Parking - Parking car at place not designated for parking - Putting up of notice near parking area - Whether mandatory - Absence of notice - Whether fatal - Whether offence not proved - Whether conviction unsustainable - Road Transport Act 1987, s. 72(5), (7) - Perintah Lalulintas Jalan (Letak Kereta Bermeter) (Wilayah Persekutuan) 1984, reg. 6*

c

The appellant was convicted of an offence under reg. 6 of the Perintah Lalulintas Jalan (Letak Kereta Bermeter) (Wilayah Persekutuan) 1984 ('the Order') for parking a car at a place not designated for parking and was ordered to pay a fine of RM150. It was not in dispute that the Order was made under s. 72 of the Road Transport Act 1987 ('the Act'), and that, by s. 72(5) thereof, the relevant authority was required to place a notice at or near the designated parking area highlighting the terms of the Order and the charges imposed thereunder. The facts showed however that no such notice had been placed by the authority, and that being so, a question arose in this appeal as to whether the conviction was rendered null and void by reason of the absence of the notice.

*d**e***Held***f*

[1] The reason for the requirement of the notice at or near the designated parking areas is obvious. Any such Order does not apply over the whole city but only upon areas designated for parking. It could be part of a road, and such parking may be for motor vehicles generally, or for public service or goods vehicles. These variations make it difficult for the public to remember which part of a road has been gazetted for the parking of which category of vehicle and at what times does the regulation apply. It is for this reason that s. 72(5) is included in the Act to require that a notice be put up. (p 84 d-f)

*g**h**i*

- a* [2] A conviction under reg. 6 of the Order thus requires proof that s. 72(5) of the Act has been complied with. And the regulation being a penal provision, the prosecution must prove same on a beyond reasonable doubt basis. In this case, in the absence of the notice board, proof of such compliance is impossible to be made out. (p 84 g)

- b* [Appeal allowed; conviction and fine set aside.]

Case(s) referred to:

PP v. Kothandaraman [1946] 12 MLJ (FMSLR) 56 (*dist*)

PP v. Rajamah [1980] 2 MLJ 280 (*refd*)

- c* **Legislation referred to:**

Road Transport Act 1987, s. 72(5), (7)

Road Traffic Ordinance 1958, s. 62

For the appellant - Tam Chee Jack; M/s Rajindar Singh Veriah & Co

For the respondent - Zauyah Be Loth Khan DPP

- d* Reported by WA Sharif

JUDGMENT

Abdul Wahab Patail J:

- e* The appellant Yap Seong Kon (the appellant) was convicted before the Magistrate's Court, Dewan Bandaraya Kuala Lumpur on 6 August 1998 in relation to a charge under Peruntukan 6, Perintah Lalulintas Jalan (Letak Kereta Bermeter) (Wilayah Persekutuan) 1984 (P.U.(A) 30) punishable under s. 72(7) Akta Pengangkutan Jalan 1987 (Akta 333) and ordered to pay a fine of RM150.
- f* He has appealed against conviction.

The submission for the respondent sets out the issue on appeal thus:

Tuduhan adalah kerana meletakkan kereta tidak di tempat yang ditetapkan – oleh itu melanggar Perintah 6 P.U.(A) 30.

- g* Tempat parking kereta di sepanjang Jalan Ipoh diselenggarakan oleh DBKL – gazetted.

Pohon gazette diambil judicial notis. PU(A) 499/84 – Jalan Ipoh item 118.

- h* Perayu tidak nafikan jalan digazetkan. Apa yang nyatakan adalah bahawa notis di bawah section 72(5) tidak diletak di kawasan tersebut.

- i*

The submission for the respondent ended as follows:

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Perayu tidak letak kereta di tempat kereta walaupun ada tempat letak kereta yang ada meter, tetapi letak 15 kaki dari petak tersebut. Dia sendiri kata (m.s. 23 KK) dia tahu mesti letak di petak letak kereta. Only issue the notice is not there.

b

The appellant was charged as follows:

Bahawasanya kamu sebagai pemilik/pemandu kenderaan motor bernombor daftar WBU 1189 pada 19hb November 1996 kira-kira jam 11.40 pagi di Jalan Ipoh Bt 4 Kuala Lumpur ada meletakkan kereta tersebut di tempat yang tidak ditetapkan sebagai tempat letak kereta dan ini adalah berlawanan dengan Peruntukan 6, Perintah Lalulintas Jalan (Letak Kereta Bermeter) (Wilayah Persekutuan) 1984 dan dengan ini kamu telah melakukan satu kesalahan yang boleh dihukum dibawah Seksyen 72(7) Akta Pengangkutan Jalan 1987.

c

Section 72(7) of Akta 333 provides:

d

72. Mengadakan tempat letak kereta dan tempat perhentian (7) Jika mana-mana orang melanggar atau gagal mematuhi sesuatu perintah yang dibuat di bawah seksyen ini tanpa sebab yang sah maka dia adalah melakukan suatu kesalahan dan apabila disabitkan boleh didenda tidak melebihi tiga ratus ringgit.

The appellant is accused of having offended against reg. 6 of the P.U.(A) 30 which provides as follows:

e

6. Tiada seorang pun boleh meletak sesuatu kereta motor atau menyebabkan atau membenarkan sesuatu kereta motor menunggu di mana-mana jalan atau di sepanjang jalan atau di mana-mana tempat di mana atau yang disebelahnya atau berdekatan dengannya pada suatu tempat letak kereta.

f

The learned DPP had cited the case of *Public Prosecutor v. Rajamah* [1980] 2 MLJ 280. I do not think that there is any question that the respondent is not the appropriate authority for the purpose of gazetting regulations for parking areas. That indeed is not the issue.

g

Section 72(5) requires that:

(5) Suatu notis yang menyatakan isi perintah itu dan caj yang ditetapkan olehnya hendaklah didirikan dan disenggara oleh pihak berkuasa yang berkenaan itu ditempat letak kereta atau tempat perhentian tersebut atau berdekatan dengannya.

h

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- a* The first question in this case is whether the absence of a notice required under s. 72(5) of Akta 333 renders a conviction under reg. 6 of the P.U.(A) 30 illegal, null and void.
- The learned DPP referred the court to *PP v. Kothandaraman* [1946] 12 MLJ (FMSLR) 56. Now, in that case it was held that the prosecution does not have to prove that the sign has been placed there lawfully. That case was not however a case of there being no sign at all. It is therefore of no assistance for the argument that the relevant authority does not have to put up a notice which is specifically required under s. 72(5).
- b*
- c* P.U.(A) 30 was made under s. 62 of the Ordinan Lalulintas Jalan 1958, which is now replaced by Akta 333. The governing provision replacing s. 62 is now s. 72 of Akta 333. It provides that the relevant authority under the section may make regulations for the provision of parking lots for various purposes.
- d* Section 72(5) requires a notice to be put up to show the terms of the order, and the charges imposed as made by the relevant authority. That is in addition to the publication of the order in the Gazette. The reason for the requirement of the notice at or near the designated parking areas is obvious. Any such order does not apply over the whole city, but only upon areas designated for parking. It could be for part of a road, and not necessarily along the whole of the road. Such parking may be for motor vehicles generally, for public service vehicles such as taxis or goods vehicles. These variations make it difficult for the public to remember which part of a road has been gazetted for the parking of which category of vehicle and at what times does the regulation apply. It is for this reason that Parliament, bearing in mind that the public using the roads also is not confined to residents within the jurisdictional area of the relevant authority but also from outside its area, outside the State and even from foreign countries, included s. 72(5) to require that a notice be put up. It is an example of a fair and just legislation. Thus a conviction under reg. 6 requires proof that s. 72(5) has been complied with. The prosecution must prove that there is a notice complying with section 72(5). Since it is a penal provision, it is trite law it must be proved beyond reasonable doubt. The absence of a notice board makes it impossible for the prosecution to prove that s. 72(5) has been complied with.
- e*
- f*
- g*
- h* For these reasons I have allowed the appeal, set aside the conviction and ordered that the fine returned to the appellant.

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